IN THE

Supreme Court of the United States

October Term, 1956

No. 276

GENERAL ELECTRIC COMPANY,
PETITIONER

vs.

LOCAL 205, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (U.E.)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

REPLY MEMORANDUM FOR PETITIONER

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In its Brief in Opposition the respondent admits that that "there is concededly an irreconcilable conflict among courts of appeals" (Br. p. 12) on the issues raised by the Petition for Certiorari as to the jurisdiction of a federal court, in an action brought under §301 of the Labor Management Relations Act, to compel arbitration by virtue of the United States Arbitration Act. But it argues that those issues were not really before the Court below for decision and that the Court's

elaborate and detailed consideration of them was "an abstract discussion of law" (Br. p. 13), mere idle talk about "hypothetical, unreal, moot, non-final and abstract questions" which may never arise (Br. p. 15). Accordingly, it contends that the decision should not be reviewed by this Court. There is no substance to this contention.

The question before the District Court, on defendant's motion to strike, was whether it had jurisdiction to compel arbitration. Since it held that the Norris-LaGuardia Act barred the relief sought, the District Court found it unnecessary to consider the further point, argued before it by both parties, whether, even apart from the prohibitions of that Act, it had any power to grant the relief prayed for. On appeal that point, as well as the applicability of the Norris-LaGuardia Act, was squarely presented to the Court of Appeals and, as that Court stated, "was fully briefed and argued" by the parties. Clearly the Court of Appeals was required to pass on all objections to the jurisdiction of the lower court. Its conclusion that the District Court had power to compel arbitration under the United States Arbitration Act was no gratuitous dictum but a decision on an issue necessary to the disposition of the case before it. And on the strength of that decision it similarly disposed of the two companion cases, *Newspaper Guild* v. *Boston Herald-Traveler Corporation*, 233 F. 2d 102 (1st Cir. 1956) and *Goodall-Sanford, Inc.* v. *United Textile Workers*, 233 F. 2d 104 (1st Cir. 1956), the latter of which is now pending before this Court on a petition for a writ of certiorari (October Term 1956, No. 262).

It is elementary that certiorari may appropriately be granted to review a decision of a court of appeals

reversing and remanding a case to a district court for further proceedings. See, *e.g. Forsyth* v. *Hammond*, 166 U. S. 506 (1897); *Spiller* v. *Atchison, Topeka & Santa Fe Railroad Company*, 253 U. S. 117 (1920); *United States* v. *Gulf Refining Company*, 268 U. S. 542 (1925); *Gay* v. *Ruff*, 292 U. S. 25, 30-31 (1934); *United States* v. *General Motors Corp.*, 323 U. S. 373 (1945); *Land* v. *Dollar*, 330 U. S. 731 (1947). As in the cited cases, the Court below here, in holding that the Arbitration Act applies and remanding the case for further proceedings under it, has determined issues "fundamental to the future conduct of the case" (*United States* v. *General Motors Corp.*, 323 U. S. 373, 377 (1945)) which, because of their importance and the irreconcilable conflict among the circuits thereon, merit present review by this Court. The District Court will now be required to follow the summary procedure provided by §§4 and 6 of the Act. Since the petitioner in its answer has already admitted the making of the arbitration agreement (R. 19, 21) and its refusal to arbitrate the grievances in question (R. 20, 21), the only issue before the District Court will be whether the grievances are arbitrable under the contract. *Cf. Goodall-Sanford, Inc.* v. *United Textile Workers*, 233 F. 2d 104 (1st Cir. 1956).

There is no merit to the respondent's contention that after remand the nature of the case may be so changed as to render moot the issues decided by the Court of Appeals. That Court, to be sure, directed the District Court to permit the parties to amend their pleadings so as to allege compliance with the requisites of the Arbitration Act and defenses afforded by it. But the Act prescribes no requisites other than those set out in §§1 and 2, which the Court of Appeals has already held to have been satisfied in this case. And it affords no

defenses other than that the contract was not made or that there has been no failure, neglect or refusal to perform it (see §4), matters already covered by the petitioner's answer. Thus, no further amendment of either party's pleadings would appear to be necessary to bring the case within the Arbitration Act as interpreted by the Court of Appeals. Indeed, the Court of Appeals itself held in the *Goodall-Sanford* case that where the record "substantially complies with the requisites of the Arbitration Act" the district court could properly proceed under the Act, although neither party had drawn its pleadings with the Act in mind (233 F. 2d 104, 106).

Even if, as the respondent suggests, it were permitted after remand to amend its complaint so as to invoke jurisdiction solely on the basis of diversity of citizenship, the decision of the Court of Appeals would not be rendered moot. The issue as to the applicability of the Arbitration Act to a collective bargaining agreement would be as fully involved in an action based on diversity of citizenship as in an action grounded on §301 of the Labor Management Relations Act, and the decision of the Court of Appeals has settled that point.

The issues decided by the Court of Appeals go to the very substance of the whole case. In view of their manifest importance and the irreconcilable conflict among the circuits thereon, the judgment below is

deserving of present review by this Court upon a writ of certiorari.

Respectfully submitted,

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